

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

BERNABÉ ANTONIO BENITO
and JESUS JIMENEZ MARTINEZ,
On Behalf of Themselves and All Others
Similarly Situated

PLAINTIFFS

v.

Case No. 1:20-cv-1039

LOWRY FARMS, INC. and
MICHAEL CLAYTON LOWRY
a/k/a CLAY LOWRY

DEFENDANTS

ORDER

Before the Court is Plaintiffs' Unopposed Motion to Modify Fair Labor Standards Act Notice (ECF No. 53) and Plaintiffs' Unopposed Motion to Amend Scheduling Order (ECF No. 54). No response is necessary, and the matters are ripe for consideration.

On August 6, 2019, Plaintiffs Bernabé Antonio Benito and Jesus Jimenez Martinez filed the instant action, alleging that they and other former H-2A temporary-visa agricultural workers (employed by Defendants Lowry Farms, Inc. and Michael Clayton Lowry between 2016 and 2019) were not paid in accordance with their contracts and did not receive minimum wage as required by federal law. Plaintiffs assert a collective action claim pursuant to the Fair Labor Standards Act (FLSA) and a class-action breach of contract claim pursuant to Federal Rule of Civil Procedure 23.

On June 17, 2021, the Court granted Plaintiffs' motion for conditional certification of the FLSA collective action and ordered Defendants to provide contact information for the potential opt-ins within fourteen (14) days so that Plaintiffs could mail a court-approved notice to those potential opt-ins. ECF No. 35. The Court approved a 120-day opt-in period with a December 10, 2021 end date. ECF Nos. 19-1, 35. On August 9, 2021, the Court granted Plaintiffs' motion for certification of a Rule 23 class action. ECF No. 38.

However, on December 16, 2021, Defendants produced an affidavit of Defendant Lowry, in which Defendant Lowry averred that at some point in December 2020 or January 2021, Defendants' employee records and other contact information for the relevant H-2A workers were destroyed. ECF No. 40-1. Thus, all records and contact information previously in Defendants' possession for a vast majority of this case's potential FLSA and Rule 23 members became unavailable to both parties. Therefore, on March 1, 2022, the Court granted Plaintiffs' motion (ECF No. 40) asking the Court to certify to the United States Department of State that certain confidential records in its possession contained the relevant contact information and that release of such information was "necessary to further the interests of justice in this case." ECF No. 45, at 3-4.

Now, in the instant motions, Plaintiffs explain that the Department of State did not provide the H-2A workers' contact information until November 7, 2022. ECF Nos. 53, 54. Therefore, Plaintiffs ask the Court to approve a modified FLSA notice that has a December 2022 mailing date and a corresponding 120-day opt-in period. ECF Nos. 53, 53-1. Plaintiffs also seek a new scheduling order to account for the new mailing date and opt-in period. ECF No. 54.

Upon consideration, the Court finds good cause for Plaintiffs' motions (ECF Nos. 53, 54), which should be and are hereby **GRANTED**. Accordingly, the Court sets a new mailing date of Friday, December 9, 2022, with a corresponding opt-in period that will expire on Monday, April 10, 2023. Further, the trial of this matter, currently scheduled for the week of June 12, 2023, is hereby cancelled, and all deadlines are lifted. A new Final Scheduling Order shall issue with a new trial date and new pretrial deadlines, including discovery and expert disclosure deadlines.

IT IS SO ORDERED, this 5th day of December, 2022.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge